

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Vince Chhabria, Judge

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
VS.)	NO. CR 17-00103-4 VC
)	
KARIM BARATOV, et al.,)	
)	
Defendants.)	
)	

San Francisco, California
Tuesday, November 28, 2017

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

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NATIONAL SECURITY DIVISION
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For Defendant:

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ANDREW MANCILLA
ATTORNEYS AT LAW

REPORTED BY: Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
Official Reporter

Tuesday - November 28, 2017

2:11 p.m.

P R O C E E D I N G S

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THE CLERK: Calling Case Number 17-cr-00103, U.S.A.
versus Karim Baratov.

Counsel, please state your appearances for the record.

MR. SHIH: Good afternoon, Your Honor. Jeff Shih on
behalf of the United States. With me here today is also Scott
McCulloch of the National Security Division from
Washington, D. C.

THE COURT: Good afternoon. Welcome.

MR. McCULLOCH: Good afternoon, Your Honor.

MR. FANTONE: For Mr. Baratov, Robert Fantone and
Andrew Mancilla.

THE COURT: Good afternoon.

MR. MANCILLA: Good afternoon, Judge.

THE COURT: Good afternoon, Mr. Baratov.

Okay. So we are here for change of pleas; is that
correct?

MR. McCULLOCH: Yes, Your Honor.

MR. FANTONE: Right, Judge.

THE COURT: And I've received a copy of the
Plea Agreement. I don't know if any changes have been made
since the version that I read yesterday. Have any changes been
made since then?

1 **MR. McCULLOCH:** No, Your Honor.

2 **MR. FANTONE:** No, Judge.

3 **MR. McCULLOCH:** We did just notice this morning
4 reviewing the document that on page 3, line 20-21, the maximum
5 supervised release term for the aggravated identity theft
6 counts is stated as three years but it should be one year, so
7 it's overstated here.

8 **THE COURT:** One year. Okay.

9 So that's being changed on the agreement that Mr. Baratov
10 is signing?

11 **MR. McCULLOCH:** Yes, Your Honor.

12 **THE COURT:** Why don't you go ahead and do that and
13 initial it.

14 (Pause in proceedings.)

15 **THE COURT:** Okay. If that's the only change that's
16 been made, I don't need to see that one, that version.

17 Okay. So I didn't have any other questions about the
18 Plea Agreement.

19 So, Mr. Baratov, I'm sure your lawyers have told you that
20 I need to ask you a series of questions, and you have to
21 provide the answers to those questions under oath. So I'll ask
22 my courtroom deputy to administer the oath to you now.

23 **THE CLERK:** Please raise your right hand.

24 (Defendant sworn.)

25 **THE DEFENDANT:** I swear.

1 **THE CLERK:** Thank you.

2 **THE COURT:** Okay. Mr. Baratov, now that you are under
3 oath, if you answer any of my questions falsely, the Government
4 can bring additional charges against you for perjury or for
5 making false statements. Do you understand that?

6 **THE DEFENDANT:** Yes.

7 **THE COURT:** Okay. And if my questions start coming
8 too fast, please do not hesitate to ask me to slow down.
9 Please do not hesitate to ask me to repeat any questions if you
10 didn't understand it or didn't hear it the first time. Also,
11 please don't hesitate to call timeout if you need to and speak
12 with your lawyers.

13 **THE DEFENDANT:** Thank you.

14 **THE COURT:** There's no speed test. There's no penalty
15 for slowing down the process. The only important thing here is
16 that you fully understand the discussion we're having today.
17 Okay?

18 **THE DEFENDANT:** Thank you.

19 **THE COURT:** So what is your full name?

20 **THE DEFENDANT:** Karim Baratov.

21 **THE COURT:** Are you a U.S. citizen?

22 **THE DEFENDANT:** No.

23 **THE COURT:** Where were you born?

24 **THE DEFENDANT:** Kazakhstan.

25 **THE COURT:** Okay. You don't need to lean that far in.

1 As long as the mic's close to you, that will be just fine. You
2 can make yourself comfortable.

3 How old are you?

4 **THE DEFENDANT:** I'm 22 years old.

5 **THE COURT:** How far did you go in school?

6 **THE DEFENDANT:** I graduated grade 12.

7 **THE COURT:** And are you currently under the influence
8 of any drug, medication, or alcoholic beverage that would
9 interfere with your ability to understand the proceedings here
10 today?

11 **THE DEFENDANT:** No.

12 **THE COURT:** Are you fully satisfied with the advice
13 and information you've received from your lawyers?

14 **THE DEFENDANT:** Yes.

15 **THE COURT:** Now, we have this Plea Agreement. Have
16 you had the opportunity to read the Plea Agreement carefully
17 and discuss it carefully with your lawyers before signing it?

18 **THE DEFENDANT:** Yes, I did.

19 **THE COURT:** Do you understand the terms of the
20 Plea Agreement?

21 **THE DEFENDANT:** Yes.

22 **THE COURT:** Nobody has made you any promises that are
23 not in the agreement to get you to sign the agreement?

24 **THE DEFENDANT:** No.

25 **THE COURT:** Nobody's threatened you in any way to get

1 you to accept the agreement?

2 **THE DEFENDANT:** No.

3 **THE COURT:** You don't have any side agreements with
4 the Government?

5 **THE DEFENDANT:** No.

6 **THE COURT:** And you're pleading guilty of your own
7 free will because you are, in fact, guilty?

8 **THE DEFENDANT:** Yes.

9 **THE COURT:** Okay. And the counts to -- let's talk
10 about the counts to which you are pleading guilty. There are
11 47 counts in the Indictment. You are pleading guilty to
12 Count 1 and then Counts 40 through 47 of the Indictment; is
13 that correct?

14 **THE DEFENDANT:** That's correct.

15 **THE COURT:** Okay. And Count 1 charges you with
16 conspiracy to commit computer fraud and abuse in violation of
17 18 U.S.C., Section 1030(b); is that correct?

18 **THE DEFENDANT:** That's correct.

19 **THE COURT:** And Counts 40 through 47 each charge you
20 with aggravated identity theft in violation of 18 U.S.C.,
21 Section 1028(a); is that your understanding?

22 **THE DEFENDANT:** Yes.

23 **THE COURT:** Okay. Now let's talk about the penalties
24 for these counts. First, for Count 1, the conspiracy to commit
25 computer fraud, the maximum prison term is 10 years, the

1 maximum fine is \$250,000 or twice the gross gain or gross loss,
2 whichever is greater. Do you understand that?

3 **THE DEFENDANT:** I understand.

4 **THE COURT:** The maximum supervised release term is
5 3 years, and there's a mandatory special assessment of \$100.
6 You will be required to pay restitution and to forfeit any
7 property or proceeds that you used or gained in the commission
8 of the crime. Do you understand that?

9 **THE DEFENDANT:** Yes.

10 **THE COURT:** Okay. So you understand that those are
11 the maximum penalties for Count 1?

12 **THE DEFENDANT:** Yes.

13 **THE COURT:** Okay. In addition, I know you weren't
14 here to begin with in the country, but after you serve any
15 prison term, you will almost certainly be deported. Do you
16 understand that?

17 **THE DEFENDANT:** Yes.

18 **THE COURT:** Okay. Now, each of the aggravated
19 identity theft counts, Counts 40 through 47, the maximum prison
20 term for each of those counts is 2 years. Do you understand
21 that?

22 **THE DEFENDANT:** Yes.

23 **THE COURT:** And the minimum prison term for these
24 counts is 2 years. Do you understand that?

25 **THE DEFENDANT:** Yes.

1 **THE COURT:** So in terms of prison time, the exposure
2 that you're facing for the identity theft counts is 2 years for
3 each of the counts. So that is eight counts of identity theft.
4 Do you understand that?

5 **THE DEFENDANT:** Yes.

6 **THE COURT:** So that's a maximum -- for those counts,
7 that's a maximum prison exposure of 16 years. Do you
8 understand that?

9 **THE DEFENDANT:** Yes.

10 **THE COURT:** And then the minimum term -- I have the
11 discretion to sentence you to concurrent terms for those eight
12 identity theft counts, but the minimum you're looking at is
13 2 years for those counts. Do you understand that?

14 **THE DEFENDANT:** I do.

15 **THE COURT:** And do you understand that for the
16 aggravated identity theft counts, the sentence for those counts
17 must be consecutive to the sentence for any other count; that
18 is, for Count 1? Do you understand that?

19 **THE DEFENDANT:** Yes.

20 **THE COURT:** Okay. In addition, for the aggravated
21 identity theft counts, the maximum fine, once again, is
22 \$250,000 or twice the gross gain or loss, whichever is greater.
23 Do you understand that?

24 **THE DEFENDANT:** Yes.

25 **THE COURT:** And the maximum supervised release term is

1 one year. Do you understand that?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** And that's, again, per -- it could be per
4 count. Do you understand that?

5 **THE DEFENDANT:** Yes.

6 **THE COURT:** And for each count there will be a
7 mandatory special assessment of \$100. Do you understand that?

8 **THE DEFENDANT:** Yes.

9 **THE COURT:** Okay. And, again, restitution,
10 forfeiture, and almost certain deportation. Do you understand
11 that?

12 **THE DEFENDANT:** I do.

13 **THE COURT:** Okay. Now, I'm looking at paragraphs
14 1 and 2 of the Plea Agreement that you just signed. Do you
15 have those in front of you?

16 Paragraph 1 is a description of the penalties that we just
17 discussed, and it's also a description of the elements of the
18 offenses to which you are pleading guilty.

19 Paragraph 2 is a factual recitation, factual description
20 of what you did, a narrative description of what you did.

21 I want to make sure you had an opportunity to very
22 carefully review these two paragraphs and discuss them with
23 your lawyer. Did you have that opportunity?

24 **THE DEFENDANT:** Yes, I did.

25 **THE COURT:** And do you have a full understanding of

1 what you're admitting to in those two paragraphs?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** Do those two paragraphs accurately
4 describe what you did?

5 **THE DEFENDANT:** Yes.

6 **THE COURT:** Okay. Now, there's a discussion in the
7 Plea Agreement of the Sentencing Guidelines and the sentencing
8 guideline calculation, but the Sentencing Guidelines are just
9 advisory for me. They are not binding on me. Do you
10 understand that?

11 **THE DEFENDANT:** I do.

12 **THE COURT:** And my job is to decide the appropriate
13 sentence for you that could be higher than what is called for
14 by the guidelines or lower than what is called for by the
15 guidelines. Do you understand that?

16 **THE DEFENDANT:** I understand.

17 **THE COURT:** Okay. And even if the Government
18 recommends a particular sentence within the guideline range, I
19 have the authority to sentence you to something higher than the
20 guideline range. Do you understand that?

21 **THE DEFENDANT:** I understand.

22 **THE COURT:** Okay. And I won't be able to reach my own
23 conclusion about sentencing until your sentencing hearing after
24 I've had an opportunity to review the Presentence Report and
25 the opportunity to review arguments from your lawyers and from

1 the Government's lawyers. Do you understand that?

2 **THE DEFENDANT:** I understand.

3 **THE COURT:** And if you're not happy -- at the end of
4 your sentencing hearing when I hand down a sentence, if you're
5 not happy with that sentence, that does not give you the right
6 to withdraw your guilty plea. Do you understand that?

7 **THE DEFENDANT:** Yes.

8 **THE COURT:** Okay. And you understand the offenses to
9 which you are pleading guilty are felony offenses?

10 **THE DEFENDANT:** I understand.

11 **THE COURT:** And by pleading guilty to felony offenses,
12 you may be giving up any civil rights that you may have here in
13 the United States. Do you understand that?

14 **THE DEFENDANT:** Yes.

15 **THE COURT:** And by giving up -- by pleading guilty,
16 you would also be giving up the right to appeal your sentence
17 or to otherwise attack the validity of your sentence. Do you
18 understand that?

19 **THE DEFENDANT:** I understand.

20 **THE COURT:** Okay. And as I mentioned, because you're
21 not a citizen, you're almost certainly going to be deported
22 after you serve your sentence. Do you understand that?

23 **THE DEFENDANT:** Yes.

24 **THE COURT:** Okay. Now let's talk about your trial
25 rights.

1 You have the right to continue to plead not guilty. Do
2 you understand that?

3 **THE DEFENDANT:** Yes.

4 **THE COURT:** And if you continue to plead not guilty,
5 you would have the right to a jury trial. Do you understand
6 that?

7 **THE DEFENDANT:** Yes.

8 **THE COURT:** And at that trial you would be presumed
9 innocent and the Government would be required to prove its case
10 against you beyond a reasonable doubt. Do you understand?

11 **THE DEFENDANT:** I understand.

12 **THE COURT:** And at trial you'd have the right to
13 counsel and you'd also have the right to counsel at every other
14 stage in the proceeding. Do you understand that?

15 **THE DEFENDANT:** Yes.

16 **THE COURT:** You'd have the right to testify in your
17 defense. Do you understand that?

18 **THE DEFENDANT:** Yes.

19 **THE COURT:** You would also at trial have the right not
20 to testify; and if you chose not to testify, that decision
21 could not be used against you at trial. Do you understand
22 that?

23 **THE DEFENDANT:** Yes.

24 **THE COURT:** You'd have the right to cross-examine any
25 witnesses for the Government at trial, and you'd also have the

1 right to call your own witnesses in your defense. Do you
2 understand that?

3 **THE DEFENDANT:** Yes.

4 **THE COURT:** And by entering this guilty plea, you're
5 giving up the trial rights I just described as well as all
6 other rights associated with a criminal trial. Do you
7 understand that?

8 **THE DEFENDANT:** Yes.

9 **THE COURT:** Okay. Is there anything else I should be
10 discussing with Mr. Baratov before taking his plea?

11 **MR. McCULLOCH:** No, Your Honor.

12 **MR. FANTONE:** No, Judge.

13 **THE COURT:** Okay. So, Mr. Baratov, how do you plead
14 to the charges? Guilty or not guilty?

15 **THE DEFENDANT:** Guilty.

16 **THE COURT:** I find that Mr. Baratov is competent and
17 capable of entering an informed plea, and that he is aware of
18 the nature of the charges and the consequences of the plea, and
19 that the guilty plea is a knowing and voluntary plea supported
20 by an independent basis in fact containing each of the
21 essential elements of the offenses. I, therefore, accept the
22 plea and the defendant is now adjudged guilty of the offenses.

23 So now, Mr. Baratov, I will refer you to the Probation
24 Office for the preparation of the Presentence Report that I
25 mentioned earlier. You will be asked to speak with the

1 probation officer. You can have your lawyers present for that
2 conversation if you wish, and you will also have the
3 opportunity to object to and dispute anything that is contained
4 in the Presentence Report.

5 But the purpose of the Presentence Report is to give me a
6 report on you and your background and the circumstances of the
7 offense -- of the offenses so that I can -- to help me
8 determine what the appropriate sentence should be. Do you
9 understand that?

10 **THE DEFENDANT:** I understand.

11 **THE COURT:** Okay. And then when -- I guess we should
12 schedule sentencing then right now?

13 **MR. SHIH:** Yes.

14 **MR. McCULLOCH:** Yes, Your Honor.

15 **THE COURT:** Okay. When should we have the sentencing
16 hearing?

17 **MR. MANCILLA:** We agreed with the Government to a
18 tentative date of February 20th if that is amenable with
19 Your Honor.

20 **THE COURT:** Does that work for us?

21 **THE CLERK:** It does. We will be in trial most likely
22 that date, so plan on a 3:00 o'clock setting for that one.

23 **MR. FANTONE:** That's all right with us.

24 **MR. McCULLOCH:** Thank you.

25 **MR. FANTONE:** Thank you.

1 **THE COURT:** Okay. So are we going to go ahead and set
2 it for 3:00 now?

3 **THE CLERK:** Yes.

4 **THE COURT:** Okay. So 3:00 o'clock.
5 Very good. Okay. Thank you very much.

6 **MR. SHIH:** I did want to flag one item for Your Honor.
7 The Government is planning on basically pursuing an
8 alternative --

9 (Defense counsel and defendant conferring.)

10 **THE COURT:** Sorry. Hold on. Take your time.

11 **MR. FANTONE:** I'm sorry, Judge.

12 **THE COURT:** No, no. Feel free to -- like I said,
13 there's no speed test.

14 **MR. FANTONE:** Thank you.

15 **THE COURT:** Feel free to communicate however you need
16 to.

17 (Defense counsel and defendant conferring.)

18 **MR. MANCILLA:** We can proceed. I apologize.

19 **THE COURT:** Okay.

20 **MR. SHIH:** The Government is planning on utilizing
21 some alternative notification procedures given the large number
22 of victims in this case, which essentially have to do with
23 posting a website. To that end, we're planning on filing a
24 motion basically authorizing us to do that. We'll run that
25 passed Defense counsel as well, but I did want to flag that to

1 the Court. That way, you know, if you saw us filing a motion,
2 you had some idea about what it was about.

3 **THE COURT:** All right. Okay. Sounds good.

4 **MR. SHIH:** Thank you.

5 **THE COURT:** Great. Thank you very much.

6 **MR. FANTONE:** Thank you, Judge.

7 **MR. MANCILLA:** Thank you. Judge.

8 **MR. FANTONE:** Thanks for accommodating our afternoon
9 call.

10 **MR. MANCILLA:** Yeah.

11 **THE COURT:** No problem.

12 **MR. FANTONE:** We appreciate it.

13 (Proceedings adjourned at 2:27 p.m.)

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3 CERTIFICATE OF REPORTER

4 I certify that the foregoing is a correct transcript
5 from the record of proceedings in the above-entitled matter.
6

7 DATE: Thursday, December 28, 2017
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12 Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
13 U.S. Court Reporter
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